

AO 241 (Rev. 09/17)

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		District: <u>Massachusetts</u>
Name (under which you were convicted): <u>José Rodriguez</u>		Docket or Case No.: <u>67940-1</u>
Place of Confinement: <u>2 Clark St. Box 43</u> <u>MCI-Norfolk, Norfolk, MA 02056</u>		Prisoner-No.: <u>W44821</u>
Petitioner (include the name under which you were convicted) <u>José Lincoln Rodriguez</u>		Respondent (authorized person having custody of petitioner) <u>Steven Silva</u>
The Attorney General of the State of:		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Dedham Superior Court, 650 High St. Dedham, MA

- (b) Criminal docket or case number (if you know):

67940-1

2. (a) Date of the judgment of conviction (if you know):

December, 1987

- (b) Date of sentencing:

April 28, 1988

3. Length of sentence:

Life, 8-10 yrs concurrent

4. In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No

5. Identify all crimes of which you were convicted and sentenced in this case:

Assault and battery
with dangerous weapon, rape

6. (a) What was your plea? (Check one)

☒ (1) Not guilty
☐ (2) Guilty

☐ (3) Nolo contendere (no contest)
☐ (4) Insanity plea

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IN CLERKS OFFICE
2020 AUG 31 AM 11:40
U.S. DISTRICT COURT
DISTRICT OF MASS.

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☒ Yes ☐ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Massachusetts Appeals Court

(b) Docket or case number (if you know): _____

(c) Result: Affirmed Convictions

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): Commonwealth v. Rodriguez, 92 Mass App Ct 1115 (2017)

(f) Grounds raised: Ineffective counsel at resentencing, sentencing, Appeals
Prosecutorial misconduct, Newly discovered ev., Petitioner should
receive benefit of new Supreme Court case Williams v. Pennsylvania

(g) Did you seek further review by a higher state court? ☒ Yes ☐ No

If yes, answer the following:

(1) Name of court: Supreme Judicial Court

(2) Docket or case number (if you know): 478 Mass. 1109 (2018)

(3) Result: Denied ALOFAR

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- (4) Date of result (if you know): 2018
- (5) Citation to the case (if you know): 478 Mass. 1109
- (6) Grounds raised: Same as Mass. Appeals Court

(h) Did you file a petition for certiorari in the United States Supreme Court?

☒ Yes ☐ No

If yes, answer the following:

- (1) Docket or case number (if you know): _____
- (2) Result: Denied Cert
- (3) Date of result (if you know): Oct. 1 2018
- (4) Citation to the case (if you know): 139 S.Ct. 180, Rodriguez v Mass.

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: Dedham Superior Court
- (2) Docket or case number (if you know): 67940-1
- (3) Date of filing (if you know): August, 1996
- (4) Nature of the proceeding: Motion for New Trial
- (5) Grounds raised: Issues raised in Mass. Appeals Court as well. Ineffective trial counsel, lost exculpatory evidence, suggestive Id. Prosecutorial misconduct

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes ☐ No

- (7) Result: Denied Motion for New trial

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(8) Date of result (if you know):

September, 1997

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court:

Dedham Superior Court

(2) Docket or case number (if you know):

67940-1

(3) Date of filing (if you know):

(4) Nature of the proceeding:

Rule 30, Motion for resentencing

(5) Grounds raised:

Newly discovered evidence, prosecutorial misconduct

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result:

Motion for New trial, denied resentencing

(8) Date of result (if you know):

March, 2016

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☒ Yes ☐ No(2) Second petition: ☒ Yes ☐ No(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: _____

Illegal Sentences

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Original sentence was illegally enhanced by juvenile cases that are innocent factually and statutorily innocent used in a recidivist statute to show repetitive behavior for life sentence enhancement. Illegal original sentence and assault and battery, dangerous weapon was falsely submitted as valid and were both used to enhance another illegal life sentence at the resentencing hearing. Interference with resentencing counsel, prosecutorial misconduct, others hid truth - See Memo.

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

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(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Rule 30 Motion

Name and location of the court where the motion or petition was filed:

Dedham Superior Court
650 High St., Dedham, MADocket or case number (if you know): 67940-1Date of the court's decision: March 4, 2016

Result (attach a copy of the court's opinion or order, if available):

Denied request for ev-
identary hearing. Denied resentencing

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Mass. Appeals CourtDocket or case number (if you know): 16-P-592Date of the court's decision: Nov. 16, 2017

Result (attach a copy of the court's opinion or order, if available):

Affirmed denial of Rule
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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO:

Conflict of Interest With Appellate Judge

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

On December 1987 assistant attorney general Hanlon Prosecuted my retrial and resentencing (1988). AAG Hanlon and AAG Susan Beck were both at the Attorney General's Office in 1987 involved in criminal prosecutions. AAG Beck in 2000 was one appellate Judge that denied my appeal and affirmed my convictions, 50 Mass App Ct 405.

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question-(d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

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Date of the court's decision: November 16, 2017Result (attach a copy of the court's opinion or order, if available): "The defendant has not shown that the Appeals Judge had 'significant personal involvement as a Prosecutor in a critical decision regarding the defendant's case.'" See Memo. add. 21(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

This issue was raised during appeal because in 2016 a new Supreme Court decision overturned the harmless error of one appellate judge. See Williams v. Pennsylvania, 136 S. Ct. 1899 (2016).

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE:

Prosecutorial Misconduct

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Prosecutor Haddon was in both trials and sentencing. Prosecutor Haddon knew the juvenile cases were dismissed in 1988 resentencing. She allowed false information at the resentencing, SDP proceedings, and appeals since 1977. The prejudice to Petitioner are illegal sentences to be affirmed and re-affirmed for 43 years.

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(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No(2) If you did not raise this issue in your direct appeal, explain why: The date of the dismissed juvenile cases were kept a secret from Petitioner because of false information.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Rule 30 MotionName and location of the court where the motion or petition was filed: Dedham Superior Court
650 High St., Dedham, MADocket or case number (if you know): 67940-1Date of the court's decision: March 4, 2016Result (attach a copy of the court's opinion or order, if available): The Court failed to address issues the newly discovered evidence was submitted in the Rule 30 which included the prosecutorial misconduct.(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Mass. Appeals CourtDocket or case number (if you know): 16-P-592Date of the court's decision: November 16, 2017Result (attach a copy of the court's opinion or order, if available): The Court failed to address the issue. See Mass. Appeals Court opinion Memo. App. 20

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR:

Ineffective Resentencing Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Resentencing Counsel had obligation go to the court and obtain copies of the dismissed juvenile cases that were used to illegally enhance sentences.

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes☒ No

(2) If you did not raise this issue in your direct appeal, explain why: Newly discovered evidence that 2 dismissed juvenile cases were used to enhance sentences

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Rule 30 Motion

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Name and location of the court where the motion or petition was filed: Dedham Superior Court650 High St., Dedham, MA 02026Docket or case number (if you know): 67940-1Date of the court's decision: March 4, 2016Result (attach a copy of the court's opinion or order, if available): The court did not address issues regarding the newly discovered evidence and ineffective counsel regarding the dismissed cases.(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Mass. Appeals CourtDocket or case number (if you know): 16-P-592Date of the court's decision: November 16, 2017Result (attach a copy of the court's opinion or order, if available): Used a finding by superior court judge that never happened. "It was within the motion judge's discretion to find that the defendant's sentencing counsel was not ineffective in failing to uncover this evidence." Memo App. 19, 83-87 Judge's findings

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____
- _____
- _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☒ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

Habeas Petition Filed in the U.S. District Court of Massachusetts; Conviction obtained by use of evidence gained Pursuant to an unconstitutional Search and Seizure, Contrary to the 4th, 6th, and 14th Amendments; ② Denial of effective assistance of counsel, failure to file motion to suppress illegally seized perim pants, 4th and 6th Amend. ③ Police interference with defendants 6th Amend. right to counsel at Pre-trial Id. ④ Impermissible and unnecessarily suggestive Id. Procedures used by police. See Memo. App. 5 for copy of petition, 5-14, and 88.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Robert Alexander, 1388 Lanier Place, Atlanta, Georgia, U.S. Small Business Administration, 120 Ralph McGill Blvd, Ga.

(b) At arraignment and plea: Judd Carhart, Address unknown

(c) At trial: Judd Carhart, address unknown

(d) At sentencing: Robert Sheketoff, Address unknown

(e) On appeal: Patricia O'Neill, Committee for Public Counsel Services, 44 Bromfield St, Boston, MA 02108

(f) In any post-conviction proceeding: Patricia O'Neill

(g) On appeal from any ruling against you in a post-conviction proceeding: Patricia O'Neill

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

The SJC denied ALOFAR on February 6, 2018. On April 25, 2018 Petitioner filed a Cert. in Supreme Court. The Supreme Court denied the Cert. on October 1, 2018. Petitioner filed a motion for a second habeas corpus and/or original filing of habeas corpus, filed on June 7, 2019 in the First Circuit

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On May 27, 2020 the First Circuit denied the motion for second habeas, but said nothing for my request for original filing of habeas Corpus. The Petitioner should receive any benefit for filing time for the COVID-19 prison lockdown and quarantine of prisoners. The person here has been lockdown, and only until recently some restrictions have been lifted. Petitioner has not had access to typewriters and must use a pen to complete this petition. Access to legal materials, legal research and law library time is extremely limited and has only recently started again. Even with this shown above petitioner has met the one year time limit. Yet the petitioner did not receive the May 27, 2020 decision until early July during this lockdown under COVID-19. Decision attached to Memo. App. 105. Petitioner is extremely limited with legal materials and access and therefore resubmitting the Memo. that was entered in the First Circuit with minor changes in Pen.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

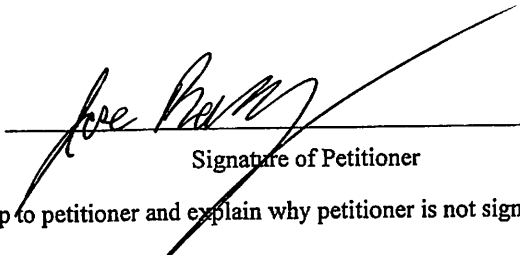
Petitioner must be resentenced;
Petitioner must be granted Direct Appeal de novo in the State courts; must
be released because of illegal sentences.

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 8-25-20 (month, date, year).

Executed (signed) on 8-24-20 (date).



Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

• Ground Five: Ineffective assistance of Appellate Counsel.

Appellate Counsel failed to pursue any sentencing issues. She failed to go to the Court file to obtain copies of the Juvenile cases. Appellate Counsel had obligation to investigate proper appellate issues.

Petitioner raised this issue in a Rule 30 motion. That was denied on March 4, 2016.

Petitioner appealed to the Mass. Appeals Court, Docket 16-P-592

Result was that Appellate Counsel was not ineffective.
See Memo. App. 17-19